

May 4, 2007

VIA EMAIL

Ms. Monica Harvey
Virginia Department of Environmental Quality
629 East Main Street
P. O. Box 1105
Richmond, VA 23218

RE: Mirant Potomac River Generating Station Draft Consent Order

Dear Ms. Harvey,

Please accept these comments on the draft Order by Consent and the alternative draft Order in the above referenced case on behalf of North Old Town Independent Citizens Civic Association (NOTICe). NOTICe is a non-profit, 501 c (3) organization dedicated to the promotion, protection, and preservation of North Old Town, Alexandria. This area is bounded on the south by Oronoco Street, on the west by North Washington Street and the George Washington Memorial Parkway, on the north by Daingerfield Island, and on the east by the Potomac River (Washington DC). Its area includes the Mirant Potomac River Generating Station and is home and workplace to over 5000 people daily and numerous recreational visitors within 1 km of the plant.

NOTICe seeks to educate Alexandria City residents, especially those residing in North Old Town, about issues that bear on their interests, welfare and common good. NOTICe has played an integral part in improving the quality of the air by demanding that adequate emission controls be placed on the Mirant Potomac River Plant.

The Potomac River Plant is the single largest point source of SO₂ in northern Virginia and has a very direct impact on the lives and health of the residents who live near the plant, as well as those in the District of Columbia who are affected by the transport of pollutants into their neighborhoods. It is critical that the emissions from this plant be limited if there is any chance that the metropolitan D.C. area will ever achieve attainment with the national ambient standards.

The need for an operating permit for the Mirant Potomac River Generating Station (PRGS) is long standing. Rather than complete that process, the Commonwealth of Virginia is now proposing this Order by Consent, providing a further excuse to delay the

issuance of a permit. If the state chooses to proceed with this Order, we recommend that it be of very short duration, with a fixed expiration date, forcing the issuance of a permit that will provide a single compilation of all control requirements for PRGS.

We continue to be concerned that the state and US EPA ignore the fact that PRGS should be subject to New Source Review. There have been both physical changes and changes in the method of operation at PRGS that have resulted in the emission of new pollutants and the potential for significant increases in the actual emissions from the facility. Among other things, the Emergency Order issued by the US Department of Energy on December 20, 2005, sets no upper limit on the generation that may be required from PRGS. As a result, “projected actual” emissions for purposes of New Source Review should be considered as the total emissions if the plant were operated continuously at maximum capacity—because that scenario could be required by DOE at any time.

There are numerous other issues that need to be addressed through the permitting process. This Consent Order should not be allowed to delay that process.

If the state nevertheless determines that a consent order is appropriate, NOTICE recommends that the Order drafted by the City of Alexandria be adopted, rather than the one offered by Mirant and the state. The City’s Order is clearly more protective of the health of residents of Alexandria and the District of Columbia than is the Order by Consent.

We offer the following specific comments on the draft Order by Consent.

The Stack Merge Project Should not be Permitted by this Consent Order

The stack merge project proposed by Mirant is appropriately addressed in the Operating Permit, not in this Consent Order. While the consent order claims that emissions would be reduced as a result of this project, there is no explanation of how or why. There is no evaluation of whether the emission of any pollutants other than SO₂ will change at all. Based on our reading of the Clean Air Act and the Virginia regulations, projects of this type, specifically for the purpose of dispersion, are prohibited.

Because the stack merge project involves construction, clearly a “physical change” in the plant, the State is charged with a careful preconstruction review of the current and anticipated emissions. If there is any increase between the current actual emissions of any pollutant and the anticipated actual levels, then additional controls must be implemented. The mechanism for that review is a permit process, not this consent order.

In addition to combining stacks, Mirant has also proposed increasing the height of the combined stacks. Increased stack height as a method of compliance with national ambient air quality standards for sulfur dioxide has been prohibited for over thirty years. In 1974, the Fifth Circuit, in *NRDC v EPA*, 489 F.2d 390, ruled that dispersion techniques, such as increasing stack height, are permissible only if there is a demonstration that other

emission reductions are unavailable or infeasible. (at 410). No such demonstration has been made here.

Intermittent Controls are Not Allowed by the Clean Air Act

PRGS has proposed to base its control scheme on a daily collection of meteorological data and predictive modeling. This scheme is totally unreliable and is not allowed by the Clean Air Act.

Again, this has been well settled law for over thirty years. In 1975, in *Kennecott Copper Corporation v. Train*, 526 F.2d 1149, the Ninth Circuit reviewed a proposed control program virtually identical to the one proposed here. In order to meet the national ambient air quality standard for sulfur dioxide, Kennecott wanted to monitor weather conditions and adjust operations accordingly. The Court found that intermittent controls of this type were of questionable reliability and enforceability. The Court pointed out that there was no assurance that any temporary reductions would not be offset by increases in emissions during times when the weather was more favorable. That same reasoning is equally applicable here.

A similar result was reached by the Sixth Circuit in *Big Rivers Electric et al v. EPA*, 523 F.2d 16. In that case, a number of utilities proposed to restrict their operations based on atmospheric conditions, just as Mirant has done here. The Court rejected this approach unless and until the state could show that continuous emission limitation measures were unavailable. No such demonstration has been made here.

Five years later, the Sixth Circuit also considered the question of taller stacks and intermittent controls in *Dow Chemical v. EPA*, 635 F.2d 559. The Court in that case affirmed earlier rulings and found that intermittent controls were not an acceptable strategy for attainment of national ambient air quality standards.

In fact, the way this proposed Order by Consent is drafted, there could never be a violation based on emissions. So long as Mirant gathered required meteorological data, completed its modeling, and made decisions based on the output of the model, it would be in compliance, regardless of whether the emissions actually produced an exceedance of the standard. This is simply an unacceptable loophole.

The Order Does Not Provide Neighbors with Real Time Data

The proposed Order by Consent would require Mirant to report bi-weekly to the state and to USEPA. While these reports are to be publicly available, there is nothing that will provide neighbors with any information on a real-time basis. Especially during line outage situations, when operations are controlled by the DOE emergency order, there is no way to warn neighbors, or District of Columbia residents that are also impacted, of the increase in emissions.

Virginia DEQ Should Proceed Expeditiously to Complete the PRGS Operating Permit

The operating permit for PRGS has languished for years. It is time for the state to focus on all the outstanding issues and get a permit issued. Only then can the communities most impacted by this facility have any confidence that there are a set of objective, enforceable requirements in place. In the context of that review, it is time that the state, and Mirant, admit that the changes that have taken place at PRGS have been significant enough to require full New Source Review and the installation of new controls.

In summary, both the stack merge project and the intermittent controls proposed in the draft Order by Consent are prohibited by the Clean Air Act as methods to achieve compliance with the national ambient air quality standards. Instead of this approach, the terms and conditions of the existing consent order should be extended through December 31, 2007, or the date when a new comprehensive operating permit is issued, whichever is earlier.

Should you have any questions, please feel free to call me or Roger Waud. We appreciate this opportunity to provide comments.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Bailey". The ink is dark and the signature is fluid, with a large loop at the end of the last name.

Kathy Bailey

cc: NOTICE Air Quality Committee